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TAGS: EAGR ECON EIND EINT ETRD KTEX TW
SUBJECT: TAIWAN TIFA FOLLOW-UP: PROGRESS AND HIGH LEVEL
INTEREST

REF: A. A) TAIPEI 2947
 B. B) TAIPEI 2923

Summary

¶1. Taiwan rolled out the red carpet for Deputy Assistant U.S. Trade Representative Eric Altbach and the U.S. trade delegation visit to Taipei August 17-21 to follow-up the May TIFA talks. Taiwan was eager to reaffirm its commitment to the TIFA process and report on actions taken since the May TIFA talks as well as reiterate its strong interest in launching talks on a Free Trade Agreement (reported in ref b). On the IPR front, the Ministry of Education has started new initiatives to address U.S. concerns regarding on-campus infringements. Executive agencies promised to press the Legislative Yuan to pass bills to control P2P file sharing and establish ISP responsibility, as well as other legislation to establish a new IP court. The National Communications Commission outlined an ambitious work plan to review restrictions for foreign investment and market entry in telecommunications and broadcasting. On a less positive note, the Council on Agriculture sought to dilute the scope of the Consultative Committee on Agriculture (CCA) with respect to policy issues. Some progress was made on market access for rice; USTR legal staff will review the proposals. USDel presented Taiwan a copy of the U.S. - Uruguay Investment Treaty to use as a model. Taiwan announced it was imposing increased restrictions on trade with North Korea and Iran. Altbach raised U.S. concerns on some individual trade cases. Taiwan noted it is still waiting for a U.S. response to the draft MOU on Textile Transshipment. Pharmaceutical issues reported reftel A. End Summary.

Introduction

¶2. August 17-21, DAUSTR Eric Altbach led a U.S. trade delegation to Taipei to review TIFA progress since the talks in May. The delegation included:

--Eric Altbach, Deputy Assistant USTR, Office of China Affairs;
--Timothy Wineland, Director, China and Taiwan Affairs, USTR;
--Thomas Bollyky, Director, Pharmaceutical Policy, USTR;

--Jeffrey Dutton, Director for Korea and Taiwan, Office of the Pacific Basin, International Trade Administration, USDOC;
--Lori Smith, International Economist, Foreign Agriculture Service, USDA; and
--Rick Ruzicka, Director, Trade and Commercial Programs, AIT/W.

IPR - Looking for progress on campus, online, and in court

¶3. The Taiwan Intellectual Property Office (TIPO) brought together staff from several agencies to meet with the delegation on IPR issues. DAUSTR highlighted the key areas of concern - IPR violations on college campuses, P2P file sharing, and the need to establish a strong IPR court with specialized prosecutors.

¶4. Jack Lu, TIPO Deputy Director General, assured DAUSTR that steps had already been taken following the TIFA talks in May and that the IPR TIFA outcomes had been incorporated into TIPO's formal work plan. He reported that Premier Su Tseng-chang had also instructed all government agencies to

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continue efforts to counter IPR infringements.

¶5. The Ministry of Education, which in the past had been criticized for unresponsiveness on IPR issues, has established an office through which rights holders and government agencies can bring their IPR concerns. To show its resolve to curb on-campus copy shops, the Ministry of Education had notified in writing all on-campus copy shops that they would lose their leases if they were found violating copyright laws. Further, the Ministry has set up an office to monitor traffic on TANet, the island-wide university computer network, to try to block online copyright infringement. Altbach praised the Ministry for these efforts and noted that follow-through and enforcement

was key. School has yet to start in Taiwan, but AIT will monitor implementation.

¶6. Lu noted the LY will shortly return to session in mid-September and review two draft bills that would regulate P2P file sharing and establish ISP responsibility. Lu said the executive agencies will push the LY to pass these bills. In a separate meeting, recording industry representatives told the delegation that they were currently in negotiations with Taiwan's two P2P companies to reach a legal settlement. They were hopeful that they would have "good news" to report on these cases by the end of September.

¶7. The delegation also raised concerns with Lu about draft legislation establishing an IP court. Industry representatives have raised two major concerns about the bill as it stands: Although the IP court would have a dedicated cadre of IP judges, there would be no dedicated group of prosecutors to handle IP cases. Industry believes that without trained, dedicated prosecutors, convictions and meaningful penalties will be difficult to obtain. A second concern is that under the current draft, the IP courts will have jurisdiction only over civil, not criminal cases (which includes copyright cases) in the first instance. This means that these cases will still first go through the district courts, which in the past have not aggressively dealt with IPR violators.

¶8. Altbach also raised these concerns separately in his meetings with Minister Chen and Director General Huang. He stressed that establishing a strong, well-functioning IP Court was more important than establishing one quickly.

¶9. To further dialogue on IPR issues, DAUSTR delivered a letter from Rachel Bae of USTR inviting TIPO to participate in a DVC to review progress on IPR issues. The letter suggested mid-September timing, but TIPO has informally requested that the DVC be postponed until mid-October. With

universities and the Legislative Yuan still on break, this will allow more time to see how the new programs are going and report on legislative developments. In addition, TIPO Deputy Jack Lu will depart for his new job on September 1 and thus not be available for the discussion.

National Communications Commission - Unconstitutional and Ambitious

¶10. DAUSTR and delegation called on Chairman Su Yeong-chin of the newly established National Communications Commission (NCC). The NCC was created in February to serve as an independent body (akin to our FCC) to regulate broadcasting and telecommunications. Establishment of an independent regulatory body fulfills a longstanding commitment to the U.S. The Council of Grand Justices, however, has ruled that the manner of selecting NCC commissioners is unconstitutional. In order to give the government time to establish a new selection method, the Council's ruling allows the NCC to maintain its current form and NCC decisions to be legally enforceable through December 2008.

¶11. Chairman Su assured Altbach that the government would solve the constitutional question and that the NCC had already developed an ambitious work plan. Su stated that the NCC wanted to lower capital and build out requirements for new market entrants to the telecom market. He also said that the Commission would review restrictions on tiered pricing and channel lineups for the cable television industry. The commissioners, Su assured Altbach, want to liberalize foreign investment regulations.

¶12. The NCC wants more interactions with the U.S. FCC. Su stated that FCC officials were being invited to a communications regulatory roundtable November 20-21 and asked for additional exchanges.

Agriculture - Taking the Meat out of our Consultations

¶13. In the only sour note of the visit, The Council of

Agriculture argued that the TIFA-mandated Consultative Committee on Agriculture (CCA) not be given the authority to make policy recommendations and discuss market access issues. Altbach countered that these were precisely our goals in setting up the CCA. He urged the COA to reconsider and solicited support from MOEA Minister Chen, noting that it would be difficult to attract high-level USG interest in a process that does neither of those things. He also noted that any recommendations would need to be agreed to by both sides. Negotiations regarding Country Specific Quota (CSQ) for Taiwan's public sector rice imports made some progress; the delegation is carrying back the proposals for review by USTR legal staff. Details reported septel.

Bureau of Foreign Trade - Investment, Textiles, Export Controls

¶14. On August 21 the delegation met Franco Huang (Chih-peng), Director General of the Bureau of Foreign Trade. Altbach passed a letter from DUSTR Bhatia addressed to Minister for Economic Affairs Chen with a copy of the U.S.-Uruguay Investment Treaty. This, he stated, could serve as a model for bilateral investment agreement talks between TECRO and AIT.

¶15. Huang raised the issue of the Memorandum of Understanding for Textile Cooperation. He noted that BOFT had reviewed and forwarded a draft MOU on July 21 for response. Altbach replied the MOU was important and that the U.S. side was currently finalizing its response and would reply soon.

¶16. Huang announced that Taiwan had issued a notice that same day (August 21) announcing increased controls on trade with North Korea and Iran. He expected the controls would

go into effect around September 15 following the public comment period.

Raid, Customs, and Chiropractors

¶17. Altbach raised two trade cases with Huang. He noted that Taiwan's restrictions on cross-strait trade and investment were hampering Taiwan from integrating fully in the regional economy. It also affected the business operations of U.S. firms with a presence in Taiwan. SC Johnson, for example was unable to import one of its products - Raid - in aerosol form from China, where it has rationalized production to provide product for the entire region. In reply, Huang outlined the petition and review process that companies can use to lift restrictions on certain mainland imports. He stressed that the process involved several agencies and that the BOFT was only one voice. He stated that due to "volatile relations" between China and Taiwan, it has gotten harder to remove these restrictions. He also noted that if the restriction was removed for Raid, it would be removed for all products in that particular category. The Department of Health, particularly, argues that many Mainland products are unsafe and/or poor quality. DAUSTR replied that quality and health concerns did not seem to be the issue because Taiwan did not restrict similar imports from a variety of other Asian countries at a similar stage of development to China's. Huang assured Altbach that he would once again review the case.

¶18. Then DAUSTR raised the long-standing Tyco customs classifications case which had been raised in July with Minister Chen in Washington. Altbach suggested that the Ministry could play some role in resolving the case. He noted that World Customs Organization had classified Tyco's thermistors as tariff-free. Huang noted, however, that the case was now in the courts and that it was difficult for BOFT to play a role. Altbach replied that Tyco continues to pursue some kind of remedy and that the USG will remain engaged in the matter.

¶19. Responding to concerns by Amcham, Altbach also urged Taiwan to reexamine its treatment of US-licensed chiropractors. After operating informally in Taiwan for

many years outside of Taiwan's established framework of health care regulation, U.S.-licensed chiropractors have faced a crackdown. The Department of Health was requiring providers of chiropractic services to obtain local licenses as a "Western" medical doctor, a Chinese medical doctor, or physiotherapist. The DOH ignored U.S. certifications and training which were directly relevant to the provision of those services. He asked that the BOFT look into the matter.

Minister of Economic Affairs Steven Chen Reaffirms Support for TIFA

¶20. To wrap up the visit, DAUSTR called on Minister of Economic Affairs Steve Chen (Ruey-long). Comments on biotech rice are reported septel and interest in a Free Trade Agreement are reported ref b. The Minister expressed his strong support for the TIFA process and stated that he would continue to lobby other ministries to participate actively in the process. In particular he would try to "encourage" COA on the scope of the CCA and noted that Vice Premier also took an active interest in the TIFA process.

Comment

¶21. DAUSTR Altbach received a clear and consistent message that Taiwan is committed to moving forward on economic and trade matters and in the TIFA process in particular. Clearly this is part of the effort to move towards eventual FTA negotiations, but is also a real opportunity to make progress in several areas. End Comment.

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